

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Colorado State Office
2850 Youngfield Street
Lakewood, Colorado 80215
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CO-921
3800 (P)

Instruction Memorandum No. CO-2004-035
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To: Field Office Managers

From: Deputy State Director, Energy, Lands, and Mineral Resources

Subject: Compliance with Critical Sections of 43 CFR 3715 and
43 CFR 3809 Regulations

The subject regulations apply respectively to use/occupancy and surface disturbance which results from exploration and mining activities conducted on unpatented mining claims and sites located on the public lands. Both sets of regulations are relatively new and are now being fully implemented around the Bureau of Land Management (BLM). Because of this fact, a clarification is appropriate to discuss the specific requirements of, and our responsibilities for, certain sections of the regulations.

The 3715 regulations do not allow mining claimants or operators to occupy the public lands without BLM authorization. Before occupancy can begin, BLM must concur that the proposed occupancy is reasonably incident to mining. Occupancy, as defined by the regulations, is not limited to residences, structures, and/or trailers, but includes such things as: fences, gates, signs and storage of equipment. Section 3715.2 lists the activities that justify occupancy and Section 3715.2-1 describes the characteristics that the occupancy must have. It is a two-part test, the activity must meet each of the requirements **and** the occupancy must involve one or more of the characteristics to be authorized.

When reviewing a 3809 Notice or Plan of Operations, proposing occupancy, ensure that it meets the requirements of 3715.2 and 3715.2-1. Review of a proposed occupancy requires compliance with the National Environmental Protection Act (NEPA). A NEPA document must also be prepared for Notice level activity. The operator must be notified in writing of concurrence or non-concurrence.

Notices are still allowed under the new 3809 regulations, but only for exploration activities disturbing five acres or less. **All** mining and milling, regardless of acreage, requires submittal of a Plan of Operations. Notices expire after two years, but can be extended for an additional two years under the provisions of 3809.333.

The notification sent to the operator must contain the expiration date. Operators should be notified 30 days in advance that their Notice will expire.

Bonds sufficient to achieve 100 percent reclamation, as performed by a third party contractor, are required for all activity beyond Casual Use. Colorado Division of Minerals and Geology (CDMG) calculates bond amounts in that way, however, we need to ensure that all site specific conditions have been accounted for and that the CDMG bond is sufficient for our needs. If deemed insufficient, BLM will require a separate bond for the additional amount. When notified of a request for bond release (either by CDMG or the operator) for a Plan of Operations, the procedures in 3809.590 (c) need to be followed. They provide 30 days for public comment prior to acceptance of final reclamation and bond release.

This guidance will help define BLM and Operator responsibilities and ensure compliance with key provisions of the Use and Occupancy and Surface Management regulations. Especially important is that occupancy under the 3715 regulations triggers the NEPA process and proper completion of a NEPA document should provide much needed protection to BLM and Operators from third party challenges. Questions pertaining to these and other requirements of the 3715 and 3809 regulations, may be directed to Roy Drew, Geologist, CO-921, 303-239-3772.

Signed by
Lynn Rust
Deputy State Director,
Energy, Lands, and Minerals

Authenticated by
Don Snow
EMS Operator